

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES**

Case Title: Russell Wayne Lester

Case No.: 20-24123 - E - 11

Docket Control No. FWP-2

Date: 04/08/2021

Time: 2:00 PM

Matter: [12] - Motion/Application Granting Replacement Liens [FWP-2] Filed by Debtor Russell Wayne Lester (isaf) [12] - Motion/Application Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001 [FWP-2] Filed by Debtor Russell Wayne Lester (isaf) [12] - Motion/Application to Use Cash Collateral [FWP-2] Filed by Debtor Russell Wayne Lester (isaf)

Judge: Ronald H. Sargis

Courtroom Deputy: Michelle Peterson

Reporter: Electronic Record

Department: E

APPEARANCES for:

Movant(s):

(by phone) Debtor's Attorney - Thomas A. Willoughby; (by phone) Debtor's Attorney - Lauren M. Kawano; (by phone) Debtor - Russell Wayne Lester; (by phone) Financial Advisor - Russell Burbank;

Respondent(s):

(by phone) Creditor's Attorney - Stephen M. Reynolds; (by phone) Creditor's Attorney - Jason J. DeJonker; (by phone) Creditor's Attorney - Douglas H. Kraft; (by phone) Creditor's Attorney - Nicholas R. Marcus; (by phone) Creditor's Attorney - Howard S. Nevins

CIVIL MINUTES

Motion Granted

Findings of fact and conclusions of law stated orally on the record

ORDER TO BE PREPARED BY: Counsel for Debtor

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on

September 2, 2020. The initial emergency hearing was conducted on August 31, 2020, and the final hearing set by order of the court for September 17, 2020.

The Motion to Use Cash Collateral is granted.

**Request for Continuance
and Interim Extension of Exclusive Period**

On February 18, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to a date to be determined at the February 23, 2021 hearing. Dckt. 415. The parties informed the court that they have agreed to vacate the briefing schedule for all the hearings scheduled in this case related to the Motion to Use Cash Collateral (FWP-2), the Motion for Extension of Exclusive Period (FWP-17), the Motion to Terminate Exclusivity (NRM-1), and the Approval of the Disclosure Statement (FWP-14).

The parties have also agreed to an interim cash collateral order authorizing use of cash collateral in the amounts and for the purposes as stated in the present cash collateral budget attached as Exhibit A to this court's Fifth Interim Order on the Motion (Docket No. 306), through the week of a subsequent hearing date to be determined by the court provided that such subsequent hearing date is within thirty (30) days of the February 23 Hearing on cash collateral. *Id.*

The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

The Court authorized the Seventh Interim Use of Cash Collateral through and including March 26, 2021, and Extended Exclusivity for the Debtor in Possession pursuant to the Stipulation of the Debtor in Possession, The Prudential Insurance Company of America, and First Northern Bank of Dixon through and including March 26, 2021. Order, Dckt. 430.

At the hearing, Prudential Life Insurance, First Northern Bank, and the Debtor in Possession reported that they have a further agreement for the interim use of cash collateral. FNB stipulates to the use of cash collateral through April 8, 2021, with FNB to have until April 5, 2021 to oppose further relief, and the Debtor in Possession until midnight on April 7, 2021 to reply. Debtor in Possession to prepare and lodge order, approved as to counsel.

Counsel for the Debtor in Possession shall prepare and lodge with the court, after being approved as to form by the respective counsel for Prudential Life Insurance and First Northern Bank, the order authorizing the further use of cash collateral and setting the April 8, 2021 continued hearing at 2:00 p.m.

APRIL 8, 2021 FINAL HEARING

On April 7, 2021, the Debtor in Possession filed an updated Status Report. Dckt. 553. The Debtor in Possession reports that First Northern Bank filed its supplemental opposition on April 5, 2021.

The fifteen page Opposition, Dckt. 532, which opposition to the final request begins on page 6 of the Opposition (the prior five pages covering the history of this case). For the 13 week period covered by the final request is for an additional \$765,105 in cash collateral, as compared to the \$1,090,169 that was authorized for the prior thirty-week period.

In the Opposition, page 8, First Northern Bank summarizes the areas of increases, which are identified as:

Labor and Related	16% Increase
Farming	189% Increase
Processing	26% Increase
Administrative	178% Increase
Other Operating	190,147% Increase

First Northern Bank argues that no basis for such substantial increases has been shown by the Debtor in Possession.

The Bank also argues that there is not sufficient evidence that it is adequately protected. It is asserted that for the replacement liens First Northern Bank has been given, the Debtor in Possession's Plan is a plan for diverting the value of the replacement collateral to other creditors.

For the Putah Creek Collateral, First Northern Bank projects that the property has a value of \$5,650,000 and the Bank's claims secured by it total (\$5,152,249), thus there is no significant recoverable value from any liquidation of the property.

First Northern Bank notes that the Debtor in Possession has monies of the estate that are not cash collateral that can be used to fund the Debtor in Possession's efforts to reorganize the business operations. The Bank computes these to total \$389,000 in nonretirement monies, stocks, and mutual funds.

DEBTOR IN POSSESSION REPLY

Debtor in Possession begins with noting that First Northern Bank's AG Production Loan and AG Asset Based Line of Credit total approximately \$8,000,000, and were secured only by personal property, and for which replacement liens have been granted. Debtor in Possession cites to First Northern Bank's \$5.65M appraisal of the Putah Creek Ranch Property having a \$5.65M value, which is subject to First Northern Bank's Real Estate and HELOC loans that total

approximately \$2M - thus providing \$3,000,000 of replacement lien value (without taking into account costs of sale).

The Debtor in Possession takes a “swipe” at First Northern Bank’s creditor strategy, noting that rather than negotiating cross collateralization prior to the filing of bankruptcy to get real estate to secure the AG loans, it instead obtained the appointment of a receiver to press its rights. Debtor in Possession concludes that this resulted in First Northern Bank being in its current situation as an “under secured creditor.” Reply, ¶ 3; Dckt. 549.

Debtor in Possession argues that since the plan has not yet been confirmed, First Northern Bank has not obtained a lien on the Putah Creek Ranch property.

Debtor in Possession argues that even if there was not the \$3M in equity for the replacement lien (which is only for diminution in value of the pre-petition collateral, 11 U.S.C. § 552, due to the use of the cash collateral), First Northern Bank could also assert a super-priority claim as provided in 11 U.S.C. § 507(b). Debtor in Possession argues that First Northern Bank should not be worried because of the large equity cushions in the various properties of the bankruptcy estate.

For the budget increases, the Reply directs First Northern Bank and the court to read the Debtor in Possession’s supplemental declaration.

In his Declaration, the Debtor in Possession testifies with respect to the 13 week budget for use of cash collateral that has caught First Northern Bank’s opposition:

9. I have reviewed the Opposition and initially have a first overriding comment. The "new" thirteen-week cash collateral budget now is the "Plan" 3-year Proforma (the "Plan Budget"). It includes 2021, 2022, and 2023. The current cash collateral budget contains thirteen weeks of the Plan budget. It is my understanding that FNB has had an earlier version of this Plan Budget since early February.

10. While reviewing the FNB opposition documents, I made notes, which I attach as Exhibit A to the Exhibit Document filed herewith and incorporated herein by this reference.

Declaration, ¶¶ 9, 10; Dckt. 550. In the Notes, which the Debtor in Possession states are incorporated into the Declaration, the additional information includes:

These are some of the additional expenses that were not in the budget for the previous Quarter:

Contract Labor	\$8,000	Grafting the young trees and increasing the collateral and future production value. Done after the tree starts to grow
Fertilizer	\$42,000	Normal cultural practice done in spring

Fuel	\$5,000	Tractors are not used much in the winter
Irrigation Parts	\$1,500	Repairs and replacement parts needed after winter
Spraying	\$10,000	Normal cultural practice. After the tree starts to grow
Electricity	\$50,000	Irrigation Pumps and for freezers that use more when hot
Admin	\$70,000	Property Taxes due but not in Q1
Admin	\$10,000	Accountant Tax Returns but not in Q1
Packaging	\$5,000	Increased sales require increased packaging supplies
Capital Imp.	\$50,000	To Insulate Freezer to maintain inventory quality and decrease electricity use this summer when it's hot
Capital Imp.	\$25,000	Fire System for Safety and collateral risk reduction
Labor	\$12,000	Longer Hours
Total for Qt.	\$288,500	about \$22,000 per week

Dckt. 551 at 4.

At the hearing, the court did not allow the expenditures for property taxes and capital improvements to insulate freezer and fire system, removing \$145,000.00 from the cash collateral budget. These long term improvement items can wait (unless an agreement can be reached between the Debtor in Possession and First Northern Bank) until after the upcoming May 29, 2021 confirmation hearing.

The “notes” include a statement that through \$1,150,000 of inventory has been sold, the value for the remaining portion has increased due to processing. *Id.*

The (\$7,900,000) of identified “additional Net Operating Losses” includes the prior estimated (\$4,255,330). *Id.* at 5. These are asserted to not be “normal losses,” but include pre-payment penalties, default interest payments, administrative expenses, taxes, and other “massive expenses” associated with bankruptcy. These loss number were generated by the Debtor in Possession’s tax attorney and not the Debtor in Possession. *Id.*

REQUESTED USE OF CASH COLLATERAL

The Cash Collateral Budget for the period March 26, 2021 through June 25, 2021 is provided in Exhibit A, Dckt. 487, which states:

	APRIL BUDGET			MAY BUDGET		
	April Forecast	March 23, 2021 Budget April	April Variance	May Forecast	March 23, 2021 Budget May	May Variance
OPERATING STATISTICS						
Walnuts Harvested (lbs)	-	-	-	-	-	-
In-Shell Shipped (lbs)	500	500	-	400	400	-
Meats Shipped (lbs)	75,000	75,000	-	80,000	80,000	-
SALES (INVOICES)						
In-Shell	825	825	-	500	500	-
Processed Meats	300,000	300,000	-	240,500	240,500	-
Custom Work/Wire Costs/Late Charges/CG/Other	-	-	-	-	-	-
Total	300,825	300,825	-	240,500	240,500	-
UNIT SALES PRICES (\$/LB)						
In-Shell	\$ 1.25	\$ 1.25	\$ -	\$ 1.25	\$ 1.25	\$ -
Processed Meats	\$ 4.00	\$ 4.00	\$ -	\$ 4.00	\$ 4.00	\$ -
ACCOUNTS RECEIVABLE						
Beginning Balance	\$ 493,551	\$ 493,551	\$ -	\$ 524,345	\$ 524,345	\$ -
Add: Invoices	\$ 300,825	\$ 300,825	\$ -	\$ 240,500	\$ 240,500	\$ -
Less: Receipts	\$ (289,832)	\$ (289,832)	\$ -	\$ (215,885)	\$ (215,885)	\$ -
Ending Balance	\$ 524,345	\$ 524,345	\$ -	\$ 548,979	\$ 548,979	\$ -
CASH RECEIPTS						
TOTAL CASH RECEIPTS	\$ 278,486	\$ 278,486	\$ -	\$ 222,788	\$ 222,788	\$ -
CASH DISBURSEMENTS						
Labor & Related						
Total	\$ 145,500	\$ 145,500	\$ -	\$ 97,000	\$ 97,000	\$ -
Farming						
Total	\$ 30,217	\$ 30,217	\$ -	\$ 24,048	\$ 24,048	\$ -
Processing						
Total	\$ 40,162	\$ 40,162	\$ -	\$ 32,130	\$ 32,130	\$ -
Administrative						
Total	\$ 48,808	\$ 48,808	\$ -	\$ 46,682	\$ 46,682	\$ -
Other Operating						
Total	\$ 33,846	\$ 33,846	\$ -	\$ 23,077	\$ 23,077	\$ -
Financing						
Total	\$ 153	\$ 153	\$ -	\$ 122	\$ 122	\$ -
Professional (Restructuring)						
Total	\$ 10,000	\$ 10,000	\$ -	\$ 5,000	\$ 5,000	\$ -
TOTAL CASH DISBURSEMENTS	\$ 308,686	\$ 308,686	\$ -	\$ 228,058	\$ 228,058	\$ -
NET CASH FLOW						
NET CASH FLOW	\$ (30,201)	\$ (30,201)	\$ -	\$ (5,270)	\$ (5,270)	\$ -
CASH (BOOK) BALANCE						
Beginning Book Balance	\$ 251,885	\$ 251,885	\$ -	\$ 221,885	\$ 221,885	\$ -
Add: Net Cash Flow	\$ (30,201)	\$ (30,201)	\$ -	\$ (5,270)	\$ (5,270)	\$ -
ENDING BOOK BALANCE	\$ 221,684	\$ 221,684	\$ -	\$ 216,615	\$ 216,615	\$ -

	JUNE BUDGET			MARCH 23, 2021 BUDGET 13 WKS – MARCH 26 THRU JUNE 25		
	June Forecast	March 23, 2021 Budget June	June Variance	8th Interim Forecast	8th Interim Budget	Variance to 8th Interim Budget
OPERATING STATISTICS						
Walnuts Harvested (lbs)	-	-	-	-	-	-
In-Shell Shipped (lbs)	400	400	-	1,300	1,300	-
Meats Shipped (lbs)	80,000	80,000	-	195,000	195,000	-
SALES (INVOICES)						
In-Shell	500	500	-	1,825	1,825	-
Processed Meats	240,000	240,000	-	780,000	780,000	-
Custom Work/Wire Costs/Late Charges/FOB/Other	-	-	-	-	-	-
Total	240,500	240,500	-	\$ 781,625	\$ 781,625	\$ -
UNIT SALES PRICES (\$/LB)						
In-Shell	\$ 1.25	\$ 1.25	\$ -	\$ 1.25	\$ 1.25	\$ -
Processed Meats	\$ 4.00	\$ 4.00	\$ -	\$ 4.00	\$ 4.00	\$ -
ACCOUNTS RECEIVABLE						
Beginning Balance	\$ 548,979	\$ 548,979	\$ -	\$ 493,551	\$ 493,551	\$ -
Add: Invoices	\$ 240,500	\$ 240,500	\$ -	\$ 781,625	\$ 781,625	\$ -
Less: Receipts	\$ (215,865)	\$ (215,865)	\$ -	\$ (701,952)	\$ (701,952)	\$ -
Ending Balance	\$ 573,614	\$ 573,614	\$ -	\$ 573,614	\$ 573,614	\$ -
CASH RECEIPTS						
TOTAL CASH RECEIPTS	\$ 222,788	\$ 222,788	\$ -	\$ 724,062	\$ 724,062	\$ -
CASH DISBURSEMENTS						
Labor & Related						
Total	\$ 97,000	\$ 97,000	\$ -	\$ 339,500	\$ 339,500	\$ -
Farming						
Total	\$ 24,048	\$ 24,048	\$ -	\$ 78,312	\$ 78,312	\$ -
Processing						
Total	\$ 32,130	\$ 32,130	\$ -	\$ 104,422	\$ 104,422	\$ -
Administrative						
Total	\$ 46,682	\$ 46,682	\$ -	\$ 142,172	\$ 142,172	\$ -
Other Operating						
Total	\$ 23,077	\$ 23,077	\$ -	\$ 80,000	\$ 80,000	\$ -
Financing						
Total	\$ 122	\$ 122	\$ -	\$ 397	\$ 397	\$ -
Professional (Restructuring)						
Total	\$ 5,302	\$ 5,302	\$ -	\$ 20,302	\$ 20,302	\$ -
TOTAL CASH DISBURSEMENTS	\$ 228,360	\$ 228,360	\$ -	\$ 785,105	\$ 785,105	\$ -
NET CASH FLOW						
NET CASH FLOW	\$ (5,572)	\$ (5,572)	\$ -	\$ (41,043)	\$ (41,043)	\$ -
CASH (BOOK) BALANCE						
Beginning Book Balance	\$ 215,415	\$ 215,415	\$ -	\$ 251,885	\$ 251,885	\$ -
Add: Net Cash Flow	\$ (5,572)	\$ (5,572)	\$ -	\$ (41,043)	\$ (41,043)	\$ -
ENDING BOOK BALANCE	\$ 210,843	\$ 210,843	\$ -	\$ 210,843	\$ 210,843	\$ -

The court grants the Motion and authorizes the use of cash collateral, excluding the \$145,000 for property taxes and capital improvements as stated above. The court grants replacement liens for any diminution in the cash collateral that occurs from its usage as provided in prior interim orders. Additionally, First Norther Bank is granted a replacement lien against the \$250,025, plus any interest accruing thereon, held in the Reserve Account identified as Wells Fargo Account xxxxxx-5879 on the Monthly Operating Report for February 2021 (Dckt. 445, p. 3) for diminution of the cash collateral.

Counsel for the Debtor in Possession shall prepare a proposed order granting the final authorization for use of cash collateral pursuant to this Motion, have it approved as to form by counsel for Prudential and counsel for First Norther Bank, and lodge the proposed order with the court.